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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/380,447	09/01/1999	Sachdev S. Sidhu	P1581R2	2633
23552	7590	09/12/2005	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			TRAN, MY CHAU T	
			ART UNIT	PAPER NUMBER
			1639	

DATE MAILED: 09/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

09/380,447

Applicant(s)

SIDHU ET AL.

Examiner

MY-CHAU T. TRAN

Art Unit

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 August 2005 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 6 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☒ The Notice of Appeal was filed on 22 August 2005. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: NONE.
Claim(s) objected to: NONE.
Claim(s) rejected: 1,3,4,7-9,11,12,30-33,42 and 44-47.
Claim(s) withdrawn from consideration: 29,42,48,49 and 52-54.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Attached Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

ADVISORY ACTION (CONT.)

Application and Claims Status

1. Applicant's amendment and response filed 08/22/2005 is acknowledged and entered.

Claim 42 has been cancelled.

Response to Arguments

2. Applicant's arguments directed to the rejection under 35 USC 102(b) as being anticipated by Light, II et al. (US Patent 5,770,356) for claims 1, 3, 4, 7, 9, 11, 12, 30, 31, and 44 are were considered but they are not persuasive for the following reasons.

Applicant contends that the fusion protein of Light, II et al. does not anticipate the presently claimed invention because the SEQ ID NO: 14 of Light, II et al. is not a variant of a wild type major coat protein. Thus, the fusion protein of Light, II et al. does not anticipate the presently claimed invention.

Applicant's arguments are not convincing since the fusion protein of Light, II et al. does anticipate the presently claimed invention. It is the examiner position is that the SEQ ID NO: 14 of Light, II et al. is a variant of a wild type major coat protein because SEQ ID NO: 14 meet the claimed structural limitation of the claimed variant of a wild type major coat protein. The sequence of SEQ ID NO 14 comprises Lys at the 2nd position, Val at the 6th position, and Lys at the 8th position (see e.g. col. 23, lines 12-49; SEQ ID NO 14) (refers to instant claims 4, and 7). Therefore, the fusion protein of Light, II et al. does not anticipate the presently claimed invention, and the rejection is maintained.

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3. Applicant's arguments directed to the rejection under 35 USC 103(a) as being unpatentable over Light, II et al. (US Patent 5,770,356) and Marks et al. (US Patent 6,794,128 B2) for claims 1, 3, 4, 7-9, 11, 12, 30-33, and 44-47 were considered but they are not persuasive for the following reasons.

Applicant alleges that the combination of Light, II et al. and Marks et al. is not obvious over the presently claimed invention because the SEQ ID NO: 14 of Light, II et al. is not a variant of a wild type major coat protein. Thus, the combination of Light, II et al. and Marks et al. is not obvious over the presently claimed invention.

Applicant's arguments are not convincing since the combination of Light, II et al. and Marks et al. is obvious over the presently claimed invention. It is the examiner position that the SEQ ID NO: 14 of Light, II et al. is a variant of a wild type major coat protein because SEQ ID NO: 14 meet the claimed structural limitation of the claimed variant of a wild type major coat protein. The sequence of SEQ ID NO 14 comprises Lys at the 2nd position, Val at the 6th position, and Lys at the 8th position (see e.g. col. 23, lines 12-49; SEQ ID NO 14) (refers to instant claims 4, and 7). Therefore, the combination of Light, II et al. and Marks et al. is obvious over the presently claimed invention, and the rejection is maintained.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to My-Chau T. Tran whose telephone number is 571-272-0810. The examiner can normally be reached on Monday: 8:00-2:30; Tuesday-Thursday: 7:30-5:00; Friday: 8:00-3:30.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Andrew J. Wang can be reached on 571-272-0811. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mct
September 7, 2005


PADMASHRI PONNALURI
PRIMARY EXAMINER